

1 BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
2 STATE OF MONTANA

3
4 IN THE MATTER OF THE CIVIL
5 PENALTY IMPOSED AGAINST
 ARLEE PUBLIC SCHOOLS

6 FINDINGS OF FACT, CONCLUSIONS OF LAW,
7 ORDER, AND MEMORANDUM OPINION

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9 These informal contested case proceedings were filed before the
10 Commissioner of Political Practices (Commissioner) to consider the appeal of the
11 principal referenced above. Pursuant to the provisions of Montana Code Annotated
12 § 5-7-306, the principal appealed the Commissioner's assessment of a civil penalty
13 resulting from its late filing of a lobbying disclosure report. The principal filed a
14 written Waiver of Hearing waiving its right to an in-person hearing, and submitted a
15 written statement for the Commissioner's consideration.

16 Based on the written submissions of the principal, the documents of record in
17 the Commissioner's file, and the applicable law, the Commissioner makes the
18 following findings of fact, conclusions of law, and order.

19 **FINDINGS OF FACT**

- 20 1. Arlee Public Schools is a principal registered with the Commissioner.
- 21 2. The 2003 Montana Legislature passed House Bill 38 and the governor
- 22 signed it into law. The law took effect on February 18, 2003. House Bill 38, now
- 23 codified at § 5-7-306, MCA, establishes civil penalties that are required to be
- 24 assessed against any person who fails to file lobbying disclosure reports within the
- 25 time required by law.
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1 3. The initial 2007 lobbying disclosure report for Arlee Public Schools was
2 required to be filed no later than February 15, 2007.

3 4. On January 29, 2007 the office of the Commissioner sent an email to all
4 principals, including Arlee Public Schools. The email advised principals that a
5 lobbying financial disclosure report covering the month of January, 2007 was
6 required to be filed by February 15, 2007. The email referenced the appropriate
7 form that was required to be filed, known as a form L-5A, and noted that it was
8 available for download on the Commissioner's website. Citing the provisions of §
9 5-7-208(4), MCA, the email stated: "A report must be filed in this office even
10 though neither lobbying nor incurring of lobbying expenses may have occurred."

11 5. Arlee Public Schools failed to file its L-5A on or before February 15,
12 2007.

13 6. On February 20, 2007, the Commissioner sent a letter to Gordon Friberg
14 stating that the January L-5A report was due February 15, 2007, but had not been
15 received. The letter stated that a civil penalty started being assessed on February 16,
16 2007, at \$50 per day, and would continue until the report was filed or until the
17 penalty amount reached \$2,500. The letter urged the principal to fax the delinquent
18 report immediately, followed by a hard copy.

19 7. On February 20, 2007, the principal filed its report. Because the report
20 was filed 2 business days late (Monday, the 19th being a holiday), a \$100 civil
21 penalty was assessed.

22 8. Arlee Public Schools requested a hearing to contest the civil penalty. The
23 Commissioner issued a Notice of Agency Action and Opportunity for Hearing on
24 April 20, 2007. Arlee Public Schools filed a written Waiver of Hearing and
25 submitted a written statement for the Commissioner's consideration.

9. In its written statement, the Arlee Public Schools asked that the penalty be waived because the Commissioner did not receive payment of the lobby registration fee until after January 10th and a lobbyist identification card was not received until late in January.

CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604 and 5-7-306, MCA.

2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

3. § 5-7-306, MCA, provides:

Civil penalties for delays in filing -- option for hearing --

suspension of penalty. (1) In addition to any other penalties or remedies established by this chapter, a person who fails to file a report within the time required by this chapter is subject to a civil penalty of \$50 for each working day that the report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report.

The person against whom a penalty is assessed may request an informal contested case hearing before the Commissioner. At the hearing, the Commissioner is required to consider any factors or circumstances in mitigation, and may reduce or waive the civil penalty. § 5-7-306(3), MCA.

4. § 5-7-208(2)(a), MCA, requires a lobbying disclosure report to be filed with the Commissioner “by February 15th of any year the legislature is in session . . .” The report “must include all payments made in that calendar year prior to February 1.” § 5-7-208(4), MCA, states that if no payments are made during the reporting period, “the principal shall file a report stating that fact.”

5. §§ 5-7-208(2)(a) and 5-7-208(4),MCA, read together, required Arlee Public Schools to file a report for January, 2007, even if Arlee Public Schools made no lobbying payments during the reporting period.

1 6. Superintendent Gordon Friberg, writing on behalf of Arlee Public
2 Schools, did not provide testimony or evidence establishing any factors or
3 circumstances in mitigation that would justify reduction of the civil penalty.
4 Lobbying reports must be filed by the due date, and principals are regularly notified
5 of filing deadlines. Short of filing a district court action, which can be very
6 expensive, the automatic civil penalty for late filers remains an effective and
7 necessary enforcement mechanism.

8 **MEMORANDUM OPINION**

9 The filing deadlines for lobbying disclosure reports are established by statute, and
10 cannot be extended. Moreover, a careful reading of the reporting requirements in §
11 5-7-208, MCA, discloses that a report for the January, 2007 reporting period was
12 required to be filed, regardless whether any payments were made during the
13 reporting period. Information offered in the written statement by Friberg requesting
14 a waiver of the penalty has no bearing on the timely filing of a lobbying report. I
15 urge principals to carefully review the statutory filing requirements to ensure that
16 they are in compliance with the law and to avoid the assessment of civil penalties in
17 the future.

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DATED this 18th day of July, 2007.

Dennis Unsworth
Commissioner of Political Practices

CERTIFICATE OF SERVICE

Gary Wining
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Mary Baker
Program Supervisor